IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.439/2007.

1) Mr. Anant Rama Kankonkar,
son of Mr.Rama Kankonkar, major
of age, Indian National, resident of
Mhalbat, Curca, Post Office Goa
Velha, Tiswadi, Goa.

2) Mr. Gurudas Rama Kankonkar,
son of Mr. Rama Kankonkar,
major of age, Indian National,
resident of Mhalbat, Curca, Post
Office Goa Velha, Tiswadi-Goa.

3) Mr. Dipak Rama Kankonkar,
son of Mr. Rama Kankonkar,
major of age, Indian National,
resident of Mhalbat, Curca, Post
Office Goa Velha, Tiswadi-Goa.

4) Mr. Demu Rama Kankonkar,
son of Rama Kankonkar,
major of age, Indian National,
resident of Mhalbat, Curca, Post
Office Goa Velha, Tiswadi-Goa.

5) Mrs. Laxmi Ramkrishna
Kankonkar, widow of Mr.
Ramkrishna Rama Kankonkar,
major of age, widow Indian National,
resident of Mhalbat, Curca, Post
Office Goa Velha, Tiswadi-Goa. ..... Petitioners.

Versus

1) FABRICA OF THE CHURCH OF
CURCA alias FABRICA DA IGREJA
DE CURCA alias FABRICA DE IGREZ
CURCA, represented by its Managing
Committee comprising of :

a) The President, Fr. Xavier Mascarenhas, aged about 57 years, Bachelor,Priest, Indian National, residentof Church of Curca, Curca, Tiswadi-Goa.

b) The Treasurer, Ms. Leena D'Silva daughter of Mr. BenedictD'Silva, aged about 34 years, unmarried, Lecturer, Indian National, resident of Curca,Canturlim, Tiswadi-Goa.

c) The Attorney, Mr. Peter Fernandes, son of late Mr. Osorio Fernandes, aged about 60 years, married, retired Indian National, resident of House No. 136, Curca, Gauncar Vaddo, Tiswadi-Goa. ..... Respondents.

Mr. D. Pangam, Advocate for the petitioners.
Mr. M. B. Da Costa, Sr. Advocate with Mr. J. A. Lobo, Advocate for the respondents.

Coram :- **R. S. MOHITE, J.**

Date : - 19th October, 2007.

ORAL JUDGMENT :

Heard. Rule. By consent, rule is made returnable forthwith.

This writ petition is impugning an order passed by Civil Judge, Senior Division dated 31.1.2007 rejecting the application at Exh.9 dated 20.6.2006 filed by the defendants for referring issue no.3 for decision to the Mamlatdar. The said issue No.3 was in the following terms.

"Whether the defendants prove that they are tenants of the suit property ?"

This reference was sought in view of judgment of the Apex Court

delivered in the case of Inacio Martins Versus Narayan Hari Naik, reported in (1993) 3, S.C.C., 123 in which the Apex Court has held as follows :-

> *" If the defendant who is sued a trespasser raises a plea of tenancy, the jurisdiction is vested in Mamlatdar to decide and the civil Court is precluded from deciding the same. "*

In the present case, prima facie it appears that the name of the father of the petitioner i.e. Rama Bambi Gauns alias Kankonkar appears, in the tenancy column of extract of Survey No.1/1. Other documents as such rent receipts are sought to be relied upon. In the circumstances, the impugned order will have to be set aside and it is directed that issue No.3 will be referred to the Mamlatdar, Tiswadi, Goa for the decision on the said issue.

It is made clear that contentions which the original plaintiff may raise about title of the suit land are kept open.

Rule is made absolute accordingly. Petition disposed off.

R. S. MOHITE, J.

SMA